



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

January 10, 1996

Kenneth R. Yarbrough
Chief of Police
City of Richardson
P.O. Box 831078
Richardson, Texas 75083-1078

OR96-0016

Dear Mr. Yarbrough:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 21532.

The City of Richardson received an open records request for the following information:

1. Certified copies of the oaths of office of certain officers and employees.
2. Certified copies of the bonds filed by the same officers and employees.
3. The contracts under which the same officers and employees are employed.
4. Copies of the last three paychecks received by these officers and employees.
5. A certified copy of Order or Warrant of Commitment for Robert Fox.
6. Foreign Agents Registration Statement (22 U.S.C. 612).
7. Loyalty and security check (22 U.S.C. 272b).

8. International commercial agreements and contracts executed by Richardson.
9. IRS Agency agreement for seizures of property/cars by Richardson (Oct. 9-Nov. 21, 1990).
10. Ken Yarbrough's contract hiring alleged attorney Rachelle H. Glazer.
11. Duty rosters for October 9, 10, 11, 1990.
12. Dispatcher's log and tapes for October 9, 1990.
13. Ten complaints prior to and ten complaints after, and in sequence with, the verified complaints against Robert J. Fox.
14. Authorization to carry and use guns.
15. Authorization to carry and use guns in the commission of a crime (grand theft auto).

You indicate that the city possesses only seven of the 15 items requested. These items are those requested in request numbers 1, 2, 4, 5, 9, 10, and 11. You originally sought to withhold these items under section 552.103 of the Government Code. A city representative has confirmed to this office that Fox v. Yarbrough is no longer pending; consequently, section 552.103 is no longer applicable to the request for information. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982). All requested information, except that specifically addressed below, must be released to the requestor.

As a preliminary matter, we note that you are not required to produce the items requested in request numbers 3, 6, 7, 8, 12, 14, and 15. The Open Records Act applies only to documents in existence at the time a request is made and does not require a governmental body to obtain information not in its possession. Open Records Decision Nos. 572 (1990) at 1; 558 (1990) at 1. In addition, the Open Records Act does not require a governmental body to answer factual questions or to perform research. Open Records Decision Nos. 555 (1990) at 1; 563 (1990) at 8. Therefore, you are not required to produce the items requested in request numbers 3, 6, 7, 8, 12, 14, and 15.

With regard to the items requested in request number 13, you assert that you cannot identify the documents requested. Obviously, you cannot provide the requested documents if you cannot identify them. It is proper for you to require the requestor to identify the documents sought; however, you also have an obligation to make a good faith

effort to relate the request to documents you possess. *See Open Records Decision No. 561 (1990) at 8.* Therefore, you should work with the requestor to clarify his request. *See id.* at 9.

We also conclude that you may be able to withhold some of the information requested in request number 4 under section 552.101.¹ Section 552.101 excepts from required public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section applies to information considered private under concepts of constitutional or common-law privacy and to information made confidential by a specific statute. *See Open Records Decision No. 584 (1991) (information concerning welfare recipients made confidential by the Texas Human Resources Code); Industrial Found. of the South v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976) (information about injuries to intimate body parts protected from disclosure by concepts of constitutional and common-law privacy). Statutes and common-law privacy protect some information that may appear on the paycheck of an employee.² Information excepted from disclosure includes any information that reveals personal investment decisions, such as an employee's allocation of money to a voluntary investment program offered by the employer, and the amount of federal tax withheld from the employee's pay. *Open Records Decision No. 600 (1992) at 8-12 (copy enclosed).*³

Similarly, you may be required to withhold under sections 552.024 and 552.117 the home addresses and telephone numbers that appear in the requested records. Section 552.117(1)(B) excepts from disclosure the home address and telephone number of a peace officer as defined by article 2.12 of the Code of Criminal Procedure. Section 552.117(1)(A), together with section 552.024, permits a government official or employee to choose whether to allow public access to their home addresses and telephone numbers. Thus, you must not release the home address or telephone number of any peace officer or of any official or employee who, before this request was made, asked that this information be kept confidential.

²Even though you did not raise this exception in your request, this office is required to consider whether any of the information you presented for review is confidential. *See Open Records Decision No. 344 (1982) at 2.*

²The federal statutes regarding income tax information might also protect some of the information on the Notice of Levy and Levy if this information were requested by someone else. This requestor may obtain this information because he is the subject of the information. *See Gov't Code § 552.023 (giving a person a special right of access to information excepted from disclosure by laws intended to protect that person's privacy).*

³Because you did not provide copies of the paychecks for our review, we are not able to determine precisely what information you should withhold. If the discussion here does not enable you to determine what information to withhold, please submit another request for a ruling and include copies of the paychecks.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and is not a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in cursive script that reads "Karen Hattaway".

Karen E. Hattaway
Assistant Attorney General
Open Records Division

KEH/ch

Ref.: ID# 21532,

Enclosures: Open Records Decision No. 600
Submitted documents

cc: Mr. Robert J. Fox
1209 Northwest Highway, #268
Carrier Route 4168
Garland, Texas 75041
(without enclosures)